U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-B-A-

DATE: APR. 9, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a development director, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner satisfied only one of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits an additional document and a brief, arguing that he fulfills at least three of the ten criteria.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner indicates that he is a development director for [redacted] in [redacted] Russia. As the Petitioner has not established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. Evidentiary Criteria

In denying the petition, the Director found that the Petitioner met the leading or critical criterion under 8 C.F.R. § 204.5(h)(3)(viii), and the record supports that conclusion. In addition, we find that the Petitioner has participated as a judge of the work of others and authored scholarly articles in a professional publication thereby satisfying the criteria for judging under 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). Because the Petitioner has demonstrated that he fulfills three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.

B. Final Merits Determination

As the Director determined that the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the

evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[1] In this matter, we determine that the Petitioner has not shown his eligibility.

The record reflects that the Petitioner received his "qualification of engineer" from in 2001 and obtained a doctor of philosophy from in 2004. In addition, the Petitioner indicates that after receiving his degrees, he was employed by various companies, such as the and working on projects in the Russia area. More recently, the Petitioner worked as a technology manager on an H1B (specialty occupation) visa for in the United States. Currently, the Petitioner is a development director for in Russia. As mentioned above, the Director found that the Petitioner performed in a leading role, and we determined that he has judged others within his field and authored scholarly articles. The record, however, does not demonstrate that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Regarding his service as a judge of others, an evaluation of the significance of his experience is appropriate to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. *See Kazarian,* 596 F. 3d at 1121-22. The record reflects that he served as chairman of a judging committee for in 2009 to evaluate and select a museum consulting company for a reconstruction project, as well as a member of the judging committee for reconstruction of an opera and ballet theater.[2] However, the Petitioner did not establish how his judging experience places him among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). He did not show, for example, how his chairmanship and membership on two judging committees compared to others at the top of the field.

Moreover, the Petitioner did not establish that his judging experience contributes to a finding that he has a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. at 59. While he served as a chairman and member of a committee for a private company approximately 10 years ago, the Petitioner did not show that such judging capability is indicative of the required sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The Petitioner did not demonstrate, for instance, that he garnered wide attention from the field based on his service on two judging committees.

Serving on a judging committee or participating in an internal review process related to a job does not automatically demonstrate that an individual has extraordinary ability and sustained national or

[1] *See also* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 4 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

[2] While the Petitioner claimed that he also served on a judging committee at for two projects and submitted a letter from the letter discusses the purpose of the judging committee and the duties of the Petitioner without establishing that he actually served on the committee.

international acclaim at the very top of his field. Without evidence that sets him apart from others in his field, such as evidence that he has a consistent history of completing a substantial number of project review requests relative to others, served in chairmanships of committees for reputable companies, or judged highly distinguished projects, the Petitioner has not established that his internal judging experience places him among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Likewise, publication of a petitioner's written work does not automatically place one at the top of the field. Here, the Petitioner presented evidence showing that he authored four papers from 2003 - 2004 published in collections of the The Petitioner, however, has not established that this publication record is consistent with having a "career of acclaimed work." H.R. Rep. No. at 59. In addition, the commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). He has not shown that his authorship of four published articles approximately 15 years ago is reflective of being among the small percentage at the very top of his field and is tantamount to a career of acclaimed work or that it demonstrates the required sustained national or international acclaim for this highly restrictive classification. *See* 8 C.F.R. § 204.5(h)(2); H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act.

Moreover, the citation history or other evidence of the influence of his articles can be an indicator to determine the impact and recognition that his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner may provide solid evidence that his work has been recognized and that others have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian,* 596 F. 3d at 1122. Although the Petitioner asserts that "[h]is authored scholarly research publications have been widely read [and] cited," he only provides evidence of one article that was used as a reference, included in the "[3] While his paper was incorporated into project standard, the Petitioner did not establish his authored works have been "widely" cited or utilized, and therefore, sufficient to demonstrate a level of interest in his field commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. Further, the Petitioner did not show that the application of his written work by the field represents attention at a level consistent with being among small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). The Petitioner, for instance, did not compare his authored works to others in his field of endeavor that are recognized as already being at the top in his field.

The record reflects that the Petitioner performed in a critical role as director of the development department of from 2007 – 2009 based on his work for a business center construction project. However, the Petitioner did not demonstrate that his employment in this role is reflective of, or has

[3] The Petitioner also indicates that his "Ph.D. thesis, thesis abstract, and the work completed during research phase can be found on all the major scientific portals of Russia and Belarus." Although he lists seven websites, he did not submit evidence of his work posted on the websites, nor did he demonstrate that they are considered "major scientific portals." In addition, the posting of his thesis and related work on websites, in and of itself, does not establish evidence of the recognition of his work in the field.

resulted in, widespread acclaim from his field or that he is considered to be at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). The record does not demonstrate that the Petitioner has held any other leading or critical roles for organizations or establishments with distinguished reputations, nor does it show that his role for approximately 10 years ago is representative of sustained national or international acclaim or a "career of acclaimed work in the field." *See* section 203(b)(1)(A) of the Act; H.R. Rep. No. at 59.

Beyond the three criteria that the Petitioner satisfied, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility. Here, for the reasons discussed below, we find that the evidence neither fulfills the requirements of any further evidentiary criteria nor contributes to an overall finding that the Petitioner has sustained national or international acclaim and is among the small percentage of the top of his field.

As it relates to awards, the Petitioner claims eligibility based on receipt of a 2007 However, the record reflects that the "Present Certificate is given to of project In order to fulfill the awards criterion, the Petitioner must demonstrate his *receipt* of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.[4] Here, the Petitioner did not receive a , rather, garnered the award. The description of this type of evidence in the regulation provides that the focus should be on "the alien's" receipt of the awards or prizes, as opposed to his or her employer's receipt of the awards or prizes.[5] Moreover, the Petitioner indicates that in 2000 he received "1st place at the in the field of 'Industrial and civil construction.'"[6] The record contains a diploma from the for the competition of students." The Petitioner has not established that awards won in competitions that were limited by his student status indicate that he "is one of that small percentage who [has] risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). In addition, even considering his awards in excess of 10 years ago, the Petitioner did not show that they are indicative of the required sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act.

With respect to the Petitioner's memberships, he claims eligibility based on memberships with the of the of the Russian Federation and the . Regarding the Petitioner submitted a letter from head of finance for who asserted that the Petitioner was a member of from 2013 – 2015 and "confirm[ed] that required outstanding achievements of their members as judged by nationally recognized experts in the field of Engineering." However, did not explain his affiliation with or how he is aware of the Petitioner's membership, nor did he reference or provide any source information to support his claims regarding the membership requirements of In addition, the record contains a letter from representative of who stated

[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6.
[5] *Id.*
[6] The Petitioner also claims that in 2006 to have "won the absolute first place by the results of a two-day competition at the corporate event in where over 30 top industry executives took part in and earned a prestigious title of an MVP (Most Valuable Person)." However, the Petitioner neither references any documentation, nor does the record contain such evidence, to support his assertions. Regardless, the Petitioner did not demonstrate that the "MVP" award is nationally or internationally recognized for excellence in the field.

that the Petitioner "is an expert in the section of the Scientific and Expert Council" and "[t]he nomination of a candidate for the membership in the scientific and expert council must contain information regarding his work and scientific activities with a mandatory indication of specialization, qualification, scientific achievements and titles, and work experience." The Petitioner, however, did not establish that those requirements reflect outstanding achievements, as judged by recognized national or international experts, nor does it represent an individual who is among the small percentage at the very top of the field. *See* 8 C.F.R. § 204.5(h)(2). As the Petitioner has not shown that he is a member of associations that limit membership to individuals with renowned endeavors, his membership evidence does not contribute to a finding that he has sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

Regarding published material, the Petitioner claimed that "[t]he major professional publication of the largest company of the Russian Federation, published an article about [him] and his master classes." The Petitioner submitted a letter from department of record keeping for who stated that in 2013 the *Bulletin of the Joint Scientific Council of Russian Railways* "published an article about [the Petitioner] in the section of the main collection of innovative articles regarding the methodology developed by the author." However, the Petitioner did not provide the referenced article to support the statements in the letter, nor did he show that the *Bulletin of the Joint Scientific Council of Russian Railways* is a professional or major trade publication or other major medium. Regardless, the Petitioner did not demonstrate that a single article published over five years ago is consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act. In addition, the evidence does not support the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. at 30704.

In regards to the Petitioner's contributions, he submitted recommendation letters that base their opinions on the Petitioner's "affidavit" and other documentation supplied to them by the Petitioner rather than their own professional knowledge of his work in the field. For example, stated that he has "reviewed [the Petitioner's] affidavit . . . am providing this affidavit based on his affidavit." Likewise, referenced "[a]ccording to [the Petitioner's] affidavit" several times. Similarly, indicated that he "review[ed] documentation pertaining to [the Petitioner's] background in detail." In general, the letters summarize the Petitioner's professional accomplishments, work history, and other claims discussed above. The letters, however, do not explain how the Petitioner's achievements have been considered by the field to be of major significance. Moreover, they do not contain detailed information showing the unusual influence or high impact his contributions have had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[7] On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting original contributions of major significance in the field.[8] Here, the letters do not provide sufficient information

[7] *See* USCIS Policy Memorandum PM 602-0005.1, supra, at 8-9.

[8] *Id.* At 9. *See also Kazarian*, 580 F.3d at 1036, aff'd in part 596 F.3d at 1115 (holding that letters the repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

and explanation, nor does the record include sufficient corroborating evidence, to show that the Petitioner is viewed by the overall field, rather than by a solicited few, as being among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. at 954. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. In visa petition proceedings, the petitioner bears the burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of V-B-A-*, ID# 2648584 (AAO Apr. 9, 2019)